

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHRISTOPHER LEE RUBIO,)
Petitioner,)
vs.) Case No. CIV-12-0207-F
H.A. LEDEZMA, Warden,)
Respondent.)

ORDER

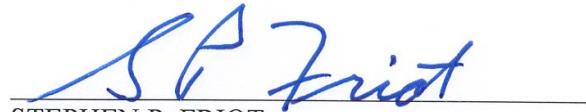
Petitioner, a federal prisoner appearing *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. no. 1.) On January April 17, 2012, Magistrate Judge Doyle W. Argo filed a Report and Recommendation (doc. no. 7), recommending that the petition be dismissed upon filing. Petitioner filed a timely objection to the Report and Recommendation, and the matter is reviewed *de novo*.

Upon review, the court concludes that it agrees with the Magistrate Judge and that no purpose would be served by any further analysis here. The court hereby **ADOPTS, ACCEPTS** and **AFFIRMS** the Report of the Magistrate Judge. (Doc. no. 7). The petition is **DISMISSED** upon filing, without prejudice.

Petitioner is entitled to a certificate of appealability only upon making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues petitioner seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in §2253(c) the meaning ascribed it in Barefoot v. Estelle, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on

the merits,...[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* When a prisoner's habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner's claims, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* The petitioner has not made the requisite showing and a certificate of appealability is **DENIED**.

Dated this 27th day of April, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

12-0207p001.wpd